ANALYSIS OF HOW PERCEPTIONS OF SURVEILLANCE AFFECT INVESTIGATIVE JOURNALISM IN SOUTH AFRICA

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ABSTRACT

There has recently been an intensifying discomfort about State spying on investigative journalists in South Africa. Journalists are harassed by what the media has now termed 'rogue spies'. Hanton (2013) defines rogue spies as "trained intelligence operatives working outside of the usually accepted rules". The findings show that investigative journalists are being spied on. Some of the respondents in this study say they have hard evidence to prove this, while others give a perspective account of their suspicions of being under surveillance. Findings furthermore show a growing trend of self-censoring among the respondents who argue that they merely try to protect their sources. Respondents say that even though surveillance of journalists is bad, it has made their journalism better and more responsible, as there is now no room for errors. In addition, findings show that there is a serious need for government to tighten the weak legislation and oversight on intelligence with regard to state security. Findings also show that the State's effort to intimidate and harass whistleblowers strangles information flow from sources into the public domain. The study examines how perceptions of surveillance affect investigative journalism in South Africa. This study is located within the context of significant local investigative journalism events that deal with investigative journalists and their perception of surveillance.

ensures that citizens make informed choices and serves a 'checking function'.

The aim of this study is to understand how perceptions of surveillance affect investigative journalism in South Africa. The study focuses on South Africa's investigative journalism and the ongoing challenges posed by government security agencies. The country's history of investigative journalism is well documented and its tradition dates back to the 1950s.

The golden thread of investigative journalism, as observed by Harber and Renn (2010), dates back to the *Guardian* of the 1950s; *Drum Magazine* (also in the 1950s and onwards); the *Rand Daily Mail* in the 1960s and 1970s; the *Sunday Express* in the 1970s; *Vrye Weekblad* in the 1980s; the *Weekly Mail* in the 1990s; *The Daily Dispatch* starting in the 1970s (and currently); and the *Sunday Times* from the 1960s onwards.

In his book *God, Spies and Lies,* author John Matisonn says that the three reporters who broke the story of the Muldergate Scandal (also known as the Information Scandal) worked for the *Weekly Mail, Sunday Times* and *Sunday Express* in the mid-to-late 1970s (Matisonn, 2015:177).

Unlike the routine journalism where journalists react to what is happening, investigative journalism is about reporting information that is not in the public domain yet. It is reporting hinged on the journalist's own initiative. Essentially, investigative journalists dig up what is secret or hidden to provide something new.

In the course of digging up new facts, journalists often encounter challenges, such as being kept under surveillance by the State.

These journalists often find themselves subjected to government's efforts to keep tabs on them and their sources (Harber & Renn,

The Association for Progressive Communications (APC) and the Humanist Institute for Cooperation with Developing Countries (Hivos) (2007:225) further report that the story led to South Africa's head of Police, Cele, being fired by the President in 2012 for dishonesty, unlawfulness and mismanagement in concluding a lease deal for offices for SAPS in the capital city of Pretoria and in Durban.

During the journalists' investigation, the Hawks (the Directorate for Priority Crime Investigation) reportedly intercepted phone conversations of Wa Afrika. This was later confirmed by the Inspector-General of Intelligence (De Lange, 2011). A police officer has since been charged with creating false information to get permission from a judge to tap the phones of Wa Afrika and Hofstätter. Eye Witness News senior journalist, Barry Bateman, in an interview with Talk Radio 702 (Friedman, 2016) explained that the officer used false names of suspects, and that he submitted five suspects and seven telephone numbers on his application. By using those false names, he then submitted the telephone numbers of the journalists among them. Wa Afrika's number was among those on this application.

This information confirms Duncan and Mare's (2015) firm view that government agents carry out spying activities and target journalists who are investigating and exposing corruption.

Holcomb and Page (2015) make a case that at least two-thirds (64%) of investigative journalists who have been interviewed believe that the government of the United States of America has most likely put them under surveillance, while eight in ten believe that being a journalist increases the likelihood of their data being collected.

According to Holcomb et al. (2015:2), concerns about surveillance and hacking have generally fallen short of keeping most journalists

the right to communicate to all citizens and argues that the media must serve the needs of all of its audience (AL-Ahmed 1987).

The research in hand explores journalists' perceptions of the extent to which State Security agencies spy on their activities in South Africa. The primary focus is on the impact of State surveillance on the practice of investigative journalism in South Africa.

The researcher attempted to understand if and how journalists' perceptions influence whether or not a story is investigated; the methods used to collect information; the measures taken to protect sources; how the evolving story is archived; how notes and files are stored to protect the journalist and his or her source; the role of editorial oversight; the institutional protection of journalists; and finally, what impact this has on how the story is written.

The current study is aimed at deconstructing the perceptions of journalists, and establishing the extent of spying on journalists as well as how it obstructs newsgathering processes.

1.2 Aim

The purpose of this study is to

- explain the perception regarding the extent of government spying on investigative journalists;
- establish how these acts of spying affect newsgathering processes;
- determine how surveillance affects journalists and how far journalists would go to safeguard media freedom;
- expound on how perceptions of surveillance influence the media's attitude towards the State.

any specific targets and was conceived of as a 360-degree scan of the political horizon. It started as an independent investigation and resulted in unlawful interception of phone calls as well as the illegal surveillance of prominent business people, senior African National Congress members and the parliamentary office of an opposition party. It did not end before surveillance – both physical and through telephone intercepts – had been conducted of businesspersons, journalists and politicians, none of whom were ever found to have engaged in nefarious activities. Such spying was illegal then, and would be illegal today; yet it is almost certainly still taking place (De Wet, 2013). According to De Wet, the mandate of Project Avani was to gather intelligence to identify any threat that the presidential succession debate would pose for the impending Jacob Zuma trial and to determine the impact that poor service delivery might have on security and stability of the Republic and its people.

Matisonn (2015:199) makes a case that spying on journalists in South Africa dates back to the 1970s, if not beyond. He says that 'besides the increasingly dysfunctional atmosphere coming from the 'bean-counters' and white establishment reactionaries, editors and journalists had to face the insidious impact of spies'. Matisonn (2015:200) reveals how a long-time spy-journalist, Gordon Winter, was embedded in several newsrooms by his editor, first at the *Sunday Express* and then later at *The Citizen*. Winter was one of the 37 South African journalists on the payroll of the then Bureau of State Security, commonly known as BOSS. They included three parliamentary correspondents, eight who worked on news desks and one editor-in-chief. The latter was in fact *Sunday Times* editor-in-chief, Tertius Myburgh. Matisonn reveals that Myburgh was kept in the newsroom and in exchange for his co-operation received secret information.

define the role of the media, the point of departure will be to look at its role in a global context. Internationally, the media wield tremendous power as purveyors of vital information (Merrill, 1995:xiv). This is one of the reasons why the media are often referred to as the fourth branch of government, because of the power they wield and the oversight function they fulfil.

In Africa, the press served as a critical force in mobilising the indigenous population against colonial rule (Arnold de Beer, Francis Kasoma, Eronini Megwa, and Elanie Steyn in Merrill (1995:214)). To unpack this, resonance can be found in McNair's (1999:1) writing, which argues that the media are important because 'a mature democracy depends on having an educated electorate, informed and connected through Parliament'. In his close examination of the role of the media in a democratic society, White (2008) concludes that they provide access to knowledge of government activities. He further states that in Africa the use of the media is the single most important factor in active and knowledgeable participation in democratic governance (White, 2008).

White's argument is supported by McNair's (1999:1) assertion that the media are important because a mature democracy depends on having an educated electorate, informed and connected through Parliament. In fact, it is principally through the media that such an electorate can be established. According to White (2008), the classical role of the media in the democratic process is to act as an independent "trustee" of the public and to continually monitor and evaluate whether the government is implementing legislation and providing the services that this legislation implies.

They are:

- 1902–03: John D. Rockefeller and the Standard Oil Company
- 1906: Upton Sinclair exposes conditions in Chicago's meatpacking plants
- 1953: Murrey Marder dogs Sen. Joseph McCarthy's witch hunt
- 1962–64: David Halberstam calls foul on the US military's rosy Vietnam claims
- 1969: Seymour Hersh exposes the My Lai massacre and cover-up
- 1971: The Pentagon Papers are leaked and published
- 1972: Woodward and Bernstein expose the Watergate break-in
- 1992: Florence Graves reveals sexual misconduct in Congress
- 2010: Dana Priest and William Arkin detail secret government organisations
- 2013: *The Washington Post* and *The Guardian* report on NSA surveillance

Likewise, South Africa has had its fair share of scandals and, had it not been for the relentless effort by newspaper houses to hold those in power accountable, these scandals would have remained buried. Like the US media, South Africa's history is not short of iconic moments, as its tradition of investigative journalism is well-established. Some of the remarkable examples of investigative journalism moments date back to the infamous *Information Scandal,* but recent-times scandals are plentiful (Harber, 2015).

Table 1: Some of the stories that broke in recent times (concluded)

Story	Description	Publication
The Nkandla Files	When the Mail & Guardian broke the story of the construction work being done at newly elected President Jacob Zuma's residence near Nkandla in KwaZulu-Natal in 2009, no one could have predicted that it would turn into a saga that would drag on for years.	Mail & Guardian
Oilgate 1 & 2	The first leg of the scandal involves PetroSA's acquisition of Sabre Oil & Gas, a British Virgin Islands company that owns oil-producing and exploration acreage off the coast of Ghana. The second leg of the scandal involves PetroSA's firing of global investment bank HSBC as transaction advisers on "Project Irene", the secretive negotiations to acquire Engen's petrol stations for about R14 billion.	Mail & Guardian
Eskom Scandal	The blackout emergency, which cost South Africa an estimated R300 billion, was engineered to benefit favoured companies. The Eskom manager who was given the job of buying more than R10 billion of emergency coal during the 2008 power crisis negotiated several "irregular" contracts – including one with a friend – and resigned shortly after an investigation was launched.	Business Day and Sunday Times
The GuptaLeaks: The Captured Presidency	Investigations show that the Guptas zeroed in on some of the nation's most sensitively placed staff, including the head of the Presidential Protection Service, as well as Zuma's chief of staff, his private secretary and a chief director in the deputy president's office. In certain instances some of these officials appear to have returned favours, potentially subverting their positions in the Union Buildings for the Guptas' benefit.	The Daily Maverick
The Prasa Train Scandal	Passenger Rail Agency of South Africa receives new diesel locomotives that are too high for the long distance routes they were intended for. The thirteen Afro 4000 diesel locomotives that have so far been delivered to Prasa are worth R600 million and form part of a larger R3.5 billion order for 70 new locomotives. The locomotives have a roof height of 4 264mm while the maximum height for diesel locomotives may not exceed 3 965mm, according to senior rail engineers with first-hand knowledge of the saga.	Rapport

cannot be understated and is in the frontline of the battle to maintain democracy. Yeoh (2011) further argues that the function of the press is, among other things, to report corruption, dishonesty and graft wherever it may occur, and to expose the perpetrators. The press must reveal dishonesty and inept administration and act as the watchdog of those governed. In line with Yeoh's analysis, Duncan (2014:197) takes it a step further by explaining the features of investigative journalism, namely "digging deeply into an issue of public interest, focusing not only on events but on the underlying process...and providing new information from multiple sources".

To further demonstrate the power and impact of investigative journalism, two scandals – the *Watergate Scandal* in the United States of America and *Muldergate* in South Africa – saw President Richard Nixon and Prime Minister of South Africa, Balthazar Johannes Vorster, leave office respectively after the scandals emerged. Herbst (2013) quotes Allister Sparks in a column, *Serialised Scandal that* appeared in *The Natal Witness*:

> "Think back to the great 'Information Scandal' Muldergate. A puny affair in moral and monetary terms compared with the Arms Deal, but it brought down the Vorster government."

"With impeachment proceedings against him having commenced," writes Swaine (2008), "Nixon resigned on August 8, 1974, telling the US people in a televised address: 'To leave office before my term is completed is abhorrent to every instinct in my body. But as President, I must put the interests of America first'."

Both Prime Minister Vorster (later President 1978–79) and President Nixon resigned from presidency due to the scandals unearthed by investigative reporters.

1.7 Scope

The focus of this study is investigative journalism as initiated in South Africa. The findings are pertinent not only to South Africa but to other countries across the continent, as investigative journalists are facing similar challenges and share similar hardships and traditions (Gearing, 2016:16).

In analysing the data, this research seeks to underscore problem areas facing investigative journalists, such as:

- the signing of bills that will discourage the whistleblowing tradition;
- using laws and legislation to enable mass surveillance on citizenry;
- state disinformation campaigns;
- intimidation and harassment of whistleblowers;
- using state security to suppress information; and
- silencing critical voices (media) and denying the media its freedoms.

1.8 Research question and sub-questions

1.8.1 Research question

How do perceptions of surveillance affect investigative journalism?

1.8.2 Sub-questions

The specific research questions that will be undertaken are as follows:

- How do they know that they are being spied on and how do these perceptions affect how news is gathered?
- How do these perceptions affect how stories are written?

CHAPTER TWO: LITERATURE REVIEW

2.1 Introduction

This chapter presents relevant literature that was reviewed in relation to the study. This was done by organising the discussion around the following five themes that emerged from the literature:

- Investigative journalism
- Freedom of expression and press
- The Protection of State Information Bill (the Secrecy Bill)
- Regulation of Interception of Communications and Provision of Communication-related Information Act
- The Cybercrimes and Cybersecurity Bill
- State surveillance

Even though the literature presents these themes in a variety of contexts, this review focuses primarily on their application and how they enable authorities to easily spy on journalists. The discussion puts into focus the continuing debate on the State's attempts to monitor (new) media.

2.2 Defining investigative journalism

The Global Investigative Journalism Network defines investigative journalism as systematic, in-depth, and original research and reporting, often involving the unearthing of secrets. This is in spite of varying definitions of this form of journalism. Mark Lee Hunter and Nils Hanson (Hanson et al., 2011:8) state:

> "It involves exposing to the public matters that are concealed – either deliberately by someone in a position of power, or accidentally, behind a chaotic mass of facts and circumstances that obscure understanding. It requires using both secret and open sources and documents."

systematic, in-depth, and original research and reporting, often involving the unearthing of secrets. Others note that its practice often involves heavy use of public records and data, with a focus on social justice and accountability.

2.3 Freedom of expression and freedom of the press

According to Kent Sidel and Aralynn McMane in Merrill (1995:146), the essence of freedom is a historic balance between two competing protections. The press is protected from State interference in the forms of censorship or restrictive licensing. In the South African context, protecting the freedom of the press is enshrined in the Bill of Rights – a cornerstone of South Africa's democracy. Section 16 of the Constitution states that: "Everyone has the right to freedom of expression which includes, among, others –

a. Freedom of the press and other media
b. Freedom to receive and impart information or ideas."

Freedoms of expression and of the press are protected in the Constitution and generally respected in practice. However, several apartheid-era laws and a 2004 Law on Antiterrorism were used by authorities to restrict reporting on the security forces, prisons, and any sites or institutions deemed by authorities to be important to the 'national interest'. One such law, the National Key Points Act of 1980, prevents journalists from accessing or photographing areas deemed of interest to national security. In recent years, there has been an increase in the number of locations designated under the Act. Journalists and media outlets at times face the threat of legal action as a result of their work, particularly when reporting on prominent political or business figures (Freedom House, 2016).

South Africa, freedom of the press is under threat and its possible censure the subject of public protest. In its endeavour to muzzle a free press, as well as to restrict the right of access to information, the present government shows no sign of abandoning its proposed Protection of Information Bill."

Cwele (Department of State Security, 2010) further noted that the Bill seeks to incorporate the rights and responsibilities guaranteed by the Constitution. This process is guided by the International Covenant on Civil and Political Rights that provides the following under article 19(2): "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print."

Section 14 of the Bill of Rights guarantees for everyone "the right to privacy which includes, among others, the right not to have the privacy of their communications infringed". The 2016 Freedom on the Net report, *Silencing the Messenger: Communication Apps Under Pressure*, criticises the introduction of a draft Cybercrimes and Cybersecurity Bill by South Africa's Department of Justice. While recognising the need for updated cybersecurity legislation, the advocates of media freedom criticised numerous aspects of the bill, which would broadly prohibit the dissemination of speech that promotes hate, discrimination, or violence; permit the seizure of computers and digital information without a court order; and criminalise the possession or dissemination of classified information – drawing comparisons to the Protection of State Information Bill or POSIB as it is known. This bill has not been passed (Freedom House, 2016).

In drawing parallels, Church (2011:36) highlights the earlier Watergate scandal in the early seventies in the United States and the much earlier clash between Lord Charles Somerset and Messrs Pringle and Fairbairn during the early British rule at the Cape. All of these highlight the necessity of a free press and the importance of upholding of the rule of law (Church, 2011:36).

In its oral and written submission to the *ad hoc* Committee on the Protection of State Information Bill (National Council of Provinces), the Legal Resource Centre's Constitutional Litigation Unit, argued that while there is general agreement that there is a need to replace the Protection of Information Act No. 84 of 1982, the Bill does not correctly balance the principles of protecting classified State information against the equally important principles of openness, transparency, accountability and the rule of law (Bizos & Kerfoot, 2012).

The current draft of the POSIB, which would criminalise certain types of disclosures, includes national security and foreign relations, but also commercially sensitive information and privacy, within the scope of the system of classification. POSIB is still being debated in South Africa (Mendel, 2013).

2.4 Regulation of Interception of Communications and Provision of Communication-related Information Act (RICA)

The so-called RICA Act (Act 70 of 2002) (RICA) came into effect on 1 July 2011 (Polity, 2013). Polity (2013) suggests that RICA became law because of the rise in organised criminal activities attributed to sophisticated communication technology such as mobile telephones, satellite communications, email and other computer-related communications. As a rule, RICA prohibits the interception and monitoring of direct and indirect communications. However, South Africa's first post-apartheid movement that centred on

more laborious process of applying for a direction". One case comes to mind, the case of the *Sunday Times* journalist Mzilikazi wa Afrika, as probably one of many cases where law enforcement services short-circuited the process to obtain a lawful interception direction and intercept the journalist's communication.

On the other hand, evidence is mounting that the State has been using surveillance to target investigative journalists, political activists and unionists, and to interfere in South Africa's politics and public life (ibid, 2016).

Frank La Rue, the United Nations Special Rapporteur on Freedom of Expression and Opinion, writes (2013:10):

> "States have access to a number of different techniques and technologies to conduct communications surveillance of a targeted individual's private communications. Real-time interception capabilities allow States to listen to and record the phone calls of any individual using a fixed line or mobile telephone, using interception capabilities for State surveillance that all communications networks are required to build into their systems."

He further states that, "the right to privacy is often understood as an essential requirement for the realisation of the right to freedom of expression. Undue interference with individuals' privacy can both directly and indirectly limit the free development and exchange of ideas. An infringement upon one right can be both the cause and consequence of an infringement upon the other" (La Rue, 2013:12).

2.6 How do these affect media freedom?

Rodriguez (2013) points out that communications surveillance should be regarded as a highly intrusive act that potentially interferes with the rights to freedom of expression and privacy and threatens the foundations of a democratic society. One extreme of surveillance is that of altering behaviour. Parramore (2013) observes that there are serious psychological consequences to being surveilled and one of those is "changing us, both as a society and as individuals, by throwing us off balance, heightening some characteristics and inhibiting others, and tailoring our behaviour sometimes to show what the watcher wants to see. It is intrusive and disempowering".

Some scholars have observed that the problem with surveillance is that people behave differently when they feel they are being watched. So, as a result, this perception has a sense of undermining the role that investigative journalism plays in securing democracy. York (2013) argues that "mass surveillance without due process threatens to stifle and smother dissent, keeping a populace cowed by fear".

York (2013) further states that extensive research on the psychological effects of such widespread surveillance has shown subjects to be self-conscious and fearful. 'The long-term damage attributable to such apprehension manifests in a variety of ways such the creation of a culture of self-censorship'. UNESCO (2014:13) argues that, increasingly, reporters are victimised for making vital information public when it embarrasses their government. In the last years, the International Federation of Journalists (IFJ) has had to intervene to protest over actions where governments have been caught spying on their journalists or applying undue pressure.

Although investigations can have a tremendous impact, journalists run great risks. One means of combating perils such as physical violence is to take a step that compromises the journalist's professional and individual freedom, namely self-censorship, which can be much worse than government censorship (UNESCO, 2014:53). Self-censorship was a great factor in the apartheid government's campaign to suppress the free flow of information.

Kessel (2012:74) points out that the dark spectre of bills, such as the Secrecy Bill, which threatens stiff penalties for the unauthorised exposure of State secrets may not only threaten the work of courageous reporters, but could also be harmful to [South Africa's] young democracy.

2.7 Spying in apartheid South Africa

Veteran South African journalist, John Matisonn argues in his book, *God, Spies and Lies,* that one of the best journalists and editors in South Africa at the time of the events he writes about was actually a government spy. Due to its chequered past, South Africa has a long history of state spying on journalists (Carter, 2015). Matisonn (2015:127) states: 'We now know the security police had bugs in the editor's flowerpot'. Matisonn (2015:168) recounts that '[Dr Eschel] Rhoodie, then Secretary of Information in the National Party Government, was receiving transcripts of journalists' bugged telephone calls. Rhoodie boasted that the phones of all the political correspondents of the opposition press were tapped. He's read all our conversations'.

Former police agent, John Horak, testified at the Truth and Reconciliation Commission (TRC) that "half the newsrooms of South Africa's newspapers were populated by informers working for the old South African government. He named almost every newspaper

Duncan (2014:224) refers to the case involving the above two journalists and suggests the bugging of their phones was confirmed by a Pietermaritzburg magistrate, who stated that the KwaZulu-Natal provincial crime intelligence chief had sent him as an emissary to apologise for the bugging. Duncan writes that the two journalists had their communications intercepted in order to disrupt their work as journalists and uncover their sources.

In an interview with Amy Goodman, legendary South African editor, Allister Spark (Goodman, 2006) narrates how police wiretapped their offices to eavesdrop on him and his staff at the then *Rand Daily Mail*. Sparks (in Goodman (2006)) lamented, "...wiretapping was pervasive in South Africa." Deceptively, the South African police also planted spies in the newsrooms, especially those seen as sympathetic to the struggle or the so-called liberal press. "I then discovered that my own secretary was a spy."

A report titled *US: Surveillance Harming Journalism, Law, Democracy* (2014) suggests that journalists are struggling harder than ever before to protect their sources, and sources are more reluctant to speak because the government is monitoring both the journalists and sources. This environment makes reporting both slower and less fruitful.

2.8 Disinformation, misinformation and targeting of whistleblowers

- *Disinformation and misinformation*

The efforts to control information sometimes involve the dissemination of misinformation and/or disinformation. This is a proactive tactic often used by state security to discredit media and

According to Du Preez the aim of *dezinformatsiya* was to disrupt and discredit opponents, and to deceive, obscure and influence public opinion. In the wake of the SARS debacle, he warned journalists and editors to brace and prepare themselves for a whole lot of *dezinformatsiya* in South Africa over the coming weeks and months (Du Preez, 2016).

Scholars Tomaselli and Louw (1991:126) make reference to the then South African Defence Force's disinformation and misinformation campaign of "Winning Hearts and Minds". Once the principle of the link between violent and peaceful means was drawn, justification was provided for declaring nonviolent political groups and opposition media the enemy, and for attacking them (Tomaselli & Louw, 1991:126).

- *Targeting of whistleblowers*

According to Kevin Malunga (2015:6), whistleblowing is the disclosure by current or former members of an organisation of immoral, illegitimate or illegal practices under the control of the employers, to organisations or persons that might be able to effect action. It can also be defined as the disclosure by an employee of confidential information relating to some danger, fraud or other illegal or unethical conduct connected with the workplace, be that of the employer or of his fellow employees (Malunga, 2015). It is this act of whistleblowing that saw the Helen Suzman Foundation (HSF) offices in Parktown, Johannesburg being the target of a military-style raid during the course of 2016. Those conducting the raid clearly knew what they were looking for, as computers and other documentation relating to the programmatic work of the HSF were taken (TMG, 2016). News reports suggested at the time "the brazen, co-ordinated nature of the operation and its targeted, selective focus are sinister". The HSF has been at the forefront of

who came to prominence in June 2013 when he released numerous highly classified NSA documents to various media organisations (Currie & McIntyre, 2016:1). He has since suffered serious consequences because he released the NSA documents, and has been charged with several criminal offences by his government as a result of his illegal actions. The first revelation from the Snowden documents provided insight into the NSA's collection of domestic email and telephone metadata from Verizon. The confidential court order, which was leaked by Snowden, requires Verizon to transfer customer information to the NSA on a daily basis.

Another significant disclosure as a result of the Snowden documents was the programme Prism, a surveillance programme that was launched in 2007 by the NSA. Prism collects the private information of internet accounts directly from the servers of nine flagship US internet companies, such as Microsoft, Google, and Facebook (Currie & McIntyre, 2016:4).

Snowden's actions to release the classified NSA documents were morally right, as the leak clearly identifies evidence of public wrongdoing and his actions embody honourable moral principles such as honesty, justice, freedom, and fidelity to the American people. The surveillance programmes have been plagued by compliance issues, and the legal arguments justifying the surveillance regime have been kept from view (Lizza 2013).

There is also the case of Julian Assange, the founder of the infamous WikiLeaks, which published confidential documents in 2010. WikiLeaks is a non-profit, whistleblowing organisation and website that publishes materials provided by anonymous sources. WikiLeaks has been responsible for a wide range of information leaks about many countries and corporations. In his own defence,

people working in government, as, according to Yende, the provincial government is characterised by a climate of fear. De Waal (2011) cites Sama Yende:

> "People in government come across corruption every day, but they are so scared to speak about it. It is not easy to get people to speak about corruption because they fear for their lives. There are stories of assassination and everyone you speak to believe their organisation is under surveillance".

2.9 The psychological effect of surveillance

Merriam-Webster defines surveillance as follows:

Surveillance

noun **sur·veil·lance \sər-ˈvā-lən(t)s also -ˈvāl-yən(t)s or -ˈvā-ən(t)s**

: *close watch kept over someone or something*

Parramore (2013) suggests that researchers have long known that there are serious psychological consequences to being surveilled, both as a society and as individuals. She argues that being watched or surveilled sometimes tailors behaviour to show what the watcher wants to see, and other times to actively rebel against a condition that feels intrusive and disempowering. This view is supported by Goldman (2014) who argues that humans care a great deal about being watched. Goldman explains that people change their behaviour and "that applies even when we're under the gaze of a pair of eyes on a poster". Similarly, surveillance is as much about perception as it is about power.

Being watched affects behaviour and emotions (Gonzalez, 2011; MacKenzie, 2006) as eyes are known to be a powerful perceptual signal for humans. People behave more cooperatively when they are being "watched".

surveillance. Accordingly, they regulate their own behaviour despite their ignorance as to whether they actually are under surveillance at any particular time (Gill & Phythian, 2006).

South Africa's respected clinical psychologist and former section head of the South African Police Service's Specialised Investigative Psychology section, Professor Gerard Labuschagne, confirmed that surveillance indeed changes one's behaviour.

Labuschagne makes the case:

> "If you are referring to surveillance by government agencies then we run the risk of becoming like North Korea, or old East Block countries, and that can create a lot of paranoia in a population and mistrust of others."

(The researcher interviewed Prof. Labuschagne via email on 24 August 2017.)

Academics agree that the topic of surveillance needs to find its place in everyday conversations. On the positive side, as observed by Golbeck (2016), surveillance has some clear benefits, such as helping authorities detect crime. This argument is centred on the growing concern of terror threats worldwide. The better the surveillance, the more likely it is that moral transgressions will be detected and punished. Knowing this, people are less inclined to break the rules, and over time they form ingrained rule-abiding habits (Westacott, 2010). On the negative side, however, commentators argue that the effectiveness of surveillance for preventing crime or terrorism can be debated, but if the goal is to control a population, mass surveillance is frightening (Shaw 2017).

Moreover, Westacott (2010) and Shaw (2017) raise a good point about surveillance altering behaviour and controlling the population.

Heightening surveillance in the workplace might be associated with two costs in particular. Work conducted under surveillance is motivated by the avoidance of punishment, rather than by goals shared with those in power (Stanton & Julian, 2002; Whitty, 2004). Surveillance involves the gathering and storing of information, as well as the supervision of behaviour. It can constrain the exercise of civil liberties. The monitoring and labelling of dissent is seen as a prerequisite for strategies to hinder civil society activities through ridicule, stigma or silencing (Lubbers 2015). In the context of this research, it is evident that behaviour does change when subjects know, or suspect, that they might be under gaze.

Labuschagne is of the view that if government-sponsored surveillance becomes the norm, it can have an indirect impact on a person's mental health, which can in turn affect a person's physical health. If it leads to paranoia, then it can affect relationships and families because people start to suspect that friends and family can report them to the state (Labuschagne, 2017).

2.10 The state's right to spy

In the contemporary international system, states are the principal customers of intelligence and the key organisers of collection and analysis agencies (Gill & Phythian, 2006:01). However, a range of sub-state actors – commercial, non-commercial and criminal – also have a need to collect and analyse intelligence and guard against the theft of their own secrets. This, according to Gill and Phythian (2006:39), is hardly surprising – given the state centrism of international relations and, with respect to internal security, the central concern with the impact of state surveillance on citizens' rights and liberties. At the domestic level, intelligence may help save lives; internationally, it can provide or be used to provide the basis for decisions to go to war, and hence cost lives (Gill & Phythian,

CHAPTER THREE – RESEARCH METHODOLOGY

3.1 Introduction

The literature review in Chapter 2 provided a broad overview of existing research as an introductory phase of this study aimed at investigating how perceptions of surveillance affect investigative journalism.

Chapter 3 presents an in-depth description of the design used to study the respondents' perceptions of surveillance and its impact on investigative journalists. This chapter also details the design of the study by reporting on the processes that were used to locate and interview participants.

Qualitative research was selected to conduct this study, as this approach is primarily exploratory in nature and serves to gain an understanding of underlying reasons, opinions and motivations. Qualitative research is also used to uncover trends in thought and opinions, and dive deeper into the problem (Wyse, 2011).

Patton (1985) suggests that qualitative, interpretive research is useful for describing and answering questions about participants and contexts. He further explains that qualitative research can answer questions and illuminate issues that cannot be addressed by quantitative methods.

Qualitative research is an effort to understand situations in their uniqueness as part of a particular context and the interactions there (Patton, 1985). This type of research builds abstractions, concepts, hypotheses or theories, rather than to test existing theory. Typically, qualitative findings are in the form of themes, categories, concepts or tentative hypotheses or theories. The product of a qualitative

collection and analysis of data in a manner that aims to combine relevance to the research purpose with economy in procedure".

3.3 Purposeful sampling

For research purposes, this study focused on investigative journalists. However, to protect them, the selected journalists could not be identified by name. The researcher chose these journalists based on the nature of investigative projects they worked on, and continue to work on, for their respective publications. The journalists write for the *Mail & Guardian*, *AmaBhungane*, *The Daily Dispatch*, *Sunday Times*, and *City Press*.

3.4 Purposive sampling

Purposive sampling is an acceptable kind of sampling for special situations (Neuman, 2013:203). It uses the judgement of an expert to select cases, or it selects cases with a specific purpose in mind. With purposive sampling, the researcher never knows whether the case selected represents the population (Neuman in Du Plooy-Cilliers et al (2013:204). Pascoe in Du Plooy-Cilliers et al (2014:137) concurs with Neuman that non-probability sampling is used when it is nearly impossible to determine who the entire population is or when it is difficult to gain access to the entire population. Non-probability sampling, according to Pascoe in Du Plooy-Cilliers et al (2014:137) can be used when researchers want to draw a sample

- that is in line with the parameters (shared characteristics) of the research;
- where not all individuals or social artefacts in the population are easy to access or are known; and/or
- where drawing a representative sample to generalise results to a broader population is not the goal of the study.

3.7 Profile of investigative journalists

Journalist	Publication	Years of experience	Gender
AA	*City Press*	More than 10 years	Male
AB	*Sunday Times*	More than 10 years	Male
AC	*Sunday Times*	Less than 10 years	Male
AD	*Mail & Guardian*	Unknown	Female
AE	*AmaBhungane*	Less than 10 years	Female
AF	*The Daily Dispatch*	Less than 10 years	Male
AG	*Freelancer*	Unknown	Male
AH	*City Press*	Less than 10 years	Male

3.8 Publication profiles

- ***City Press***

The *City Press* is a South African English-language Sunday newspaper, published in Johannesburg, Gauteng. It is aimed at black readers and is the country's third-biggest-selling newspaper. James R.A. Bailey and the South African Associated Newspapers (SAAN) group established the newspaper in 1982 as the *Golden City Press (www.news24.com)*.

3.9 Reliability and validity

Kumar (2011:178) defines validity as the ability of an instrument to measure what it is designed to measure; therefore, validity is defined as "the degree to which the researcher has measured what he has set out to measure". Kumar (2011:181) also defines reliability as a degree of accuracy or precision in the measurement made by a research instrument. Du Plooy-Cilliers, Davis and Bezuidenhout (2014:253) believe that reliability and validity in research are much like the way in which human beings develop feelings of trust in certain people. Kumar (2011:179) furthermore observes that these two approaches are based on either logic that underpins the construction of the research tool, or statistical evidence that is gathered by using information generated by means of the instrument. Establishing validity through logic implies the justification of each question in relation to the objectives of the study.

It is worth noting that these two concepts, reliability and validity, are employed very commonly in quantitative research, as they relate to the measurability of results. Du Plooy-Cilliers et al. (2014:253) state that "this does not mean that qualitative researchers do not deem validity and reliability important; they just use different terminology to describe the same idea".

During the course of data gathering, participants freely shared information and their experiences. Most of them described the study as 'long overdue'.

The study in hand employed open-ended questions to encourage respondents to elaborate on their experiences.

3.11 Data analysis

3.11.1 Qualitative content analysis

Strydom and Bezuidenhout in Du Plooy-Cilliers et al. (2014:191) define qualitative content analysis as a research method for the subjective interpretation of text data through a systematic classification process of coding and identifying themes or patterns. Qualitative content analysis involves the systematic analysis of social artefacts to provide an in-depth understanding of, for example, media texts and their specific contexts. In performing a qualitative content analysis, the researcher works in an interpretive paradigm with the goal of providing a thick description of the social reality mirrored in texts (Du Plooy-Cilliers et al., 2014:191).

3.12 Data presentation

Du Plooy-Cilliers et al. (2014:249) advise researchers to keep in mind that qualitative research is fundamentally interpretive and that the interpretation represents the researcher's personal and theoretical understanding of the phenomenon under study. Researchers therefore need to organise information throughout the presentation in terms of the themes and categories that were used for analysis and interpretation.

3.15 Structure of the dissertation

The dissertation was structured as follows:

Chapter 1 - Introduction

Chapter 2 – Literature review

Chapter 3 – Research methodology

Chapter 4 – Data analysis, findings and conclusion

and monitoring of journalists carried out by the State was illegal, and created a climate of fear among journalists.

The second section focuses on how the State used dirty tricks to intimidate journalists in a bid to stifle investigations into state corruption – which often involved senior public officials. It emerged from the study that the State also used dirty tricks to either misinform or push a certain dialogue into the public domain. Other common means of dirty tricks used by the State ranged from discrediting journalists to leaking stories and planting fake stories.

The third section focuses on how interviewees resorted to self-censoring to protect themselves and their sources from scrutiny by state security. The study revealed a problematic situation in that it mirrored an environment where fear rules. The fourth section discusses how journalists, despite state interference, were resolute in their quest to unearth and disclose corruption in the public sector. The findings suggest that journalists resorted to using sophisticated methods to counter the prying of state security agents. The last section presents opinions of the participants on their perception of spying and its impact on investigative journalism in South Africa.

4.2 Themes

4.2.1 Theme 1: Journalists' perception of surveillance

From the journalists' perspective, the fear of being spied on by the State is best described by *Daily Maverick* journalist, Mandy Weiner (2013), when she wrote that "when you greet on the phone you must greet Richard Mdluli also". Weiner claimed that Mdluli, the former head of the SAPS's Crime Intelligence Division, was the bogeyman who personified everything perceived to be bad and corrupt about the country and the police service.

He further suggested that "any monitoring that infringes the rights of any person must be done with a court order, and be in line with the Monitoring and Interception Act and other legislation".

The study revealed that the journalists claimed they had been harassed by the State and their phones had been wiretapped. The reactions of investigative journalists to surveillance by the State seemed to be symptomatic of a wider tendency. Most of the journalists interviewed for this study believed that their conversations were being listened to. As for electronic communications surveillance, the respondents were not sure if and when it happened, as it was difficult to prove. Regarding the bugging of their phones, they had reason to believe that their conversations were 'sometimes' being listened to, despite a lack of hard evidence to prove this. The truth is that wiretapping and other forms of message interception have been the common currency of espionage and intelligence services over many decades (Lyon, 1994:4).

The eight respondents expressed and interpreted their suspicions and perceptions in a variety of ways, and most agreed that they might have been subjected to unjustified surveillance by the State. Nonetheless, some respondents admitted to having been oblivious of the State's attempt to eavesdrop on them. One of the eight respondents in fact claimed not to have been affected by state surveillance at all, and no further explanation was given.

It was interesting to note that only one respondent out of the eight actually admitted to having been spied on and revealed the following:

Interviewee AB:

Yes I have been surveilled several times.

These observations have one thing in common: although none of the respondents could prove that they had been spied upon, a clear pattern emerged – that of mistrust between the respondents and the State. Interviewees appeared to have a firm view on the likelihood of being spied on, and as a result they were not letting their guard down. Similarly, despite a few known cases of being spied on, respondents seemed to suggest that the State was monitoring their phone conversations persistently. This is symptomatic of a State gravitating towards totalitarianism, a view reinforced by Lyon (1994:11). This fits in with the overall pattern observed, whereby respondents stated that they were largely conditioned by their specific personal experiences and those of other individuals, and by the immediate need to exercise extra caution when communicating with sources or (to some extent) with family and friends. The study showed that surveillance, which was once thought of as touching only the realm of political citizenship, was now affecting our involvement in society at a more basic level (Lyon, 1994:12).

4.2.2 Theme 2: Dirty tricks

Responses provided by the respondents during their interviews clearly demonstrated a concerted effort of meddling by officials (from government and state-owned companies) where there was a likelihood of corruption having taken place. This fits the overall pattern identified through data analysis that officials sometimes resorted to 'dirty tricks'. Incidents the State has been accused of ranged from hiding information, and listening to and intercepting telephonic and other electronic conversations, to breaking into journalists' homes to look for information pertaining to ongoing investigations and discrediting journalists through lifestyle audits.

Interviewee AF:

> *Sometimes they* [were] *not responding to questions or they* [would] *withhold information and threatened me with a lawsuit.*

Interviewee AH:

> *I have once reported on a matter involving the State Security Agency and a government official came to our offices and demanded that I hand over documents that were relevant to the article.*

Only two respondents reported that they had not experienced any form of bullying by the State.

Those who have reportedly been intimidated said the situation had reached a stage where the media were seen as a threat, and attempts to bring it to heel and under control had not worked. As such, the media were being treated as a hostile opponent, and started to receive rhetoric around being some 'dark' entity comprising of agents and spies. The respondents felt that matter were getting to the stage where investigative journalists were seen as the enemy.

4.2.3 Theme 3: Spies embedded in newsrooms

Interviewees had the perception that spies had infiltrated newsrooms in South Africa. This inadvertently contributed to a climate of fear. Some interviewees felt that newsrooms were no longer a safe haven for journalists. However, two of the eight participants were not concerned and did not think this was the case, while the other six agreed that indeed there were spies in their midst.

The respondents did not name the suspected spies whom they accused of infiltrating newsrooms, but at least were in agreement about the presence of such spies in their midst. Their varying assessments on spies in newsrooms had one thing in common: none doubted the occurrence and possibility of this happening. This had to a large degree changed their attitude towards state surveillance and raised the issue of trust among colleagues. Seeing that there was not complete trust within the newsrooms where these journalists worked, a silo mentality was encouraged in the workplace – where people resisted sharing information with other people or departments.

4.2.4 Theme 4: Paranoid and helpless

Of the eight interviewed respondents, two said that they did not feel too vulnerable, as they were exercising extra care when gathering information from sources.

Interviewee AG:

> *Me being cautious means that I am constantly aware of the risks.*

Interviewee AD:

> *I try my utmost not to think about these things too much, it can be severely crippling. My knee-jerk reaction therefore would be no, I never feel vulnerable. However, seeing that I'm very careful with my communication and how I gather information from sources, it is clear that I'm constantly aware of the risks.*

Nonetheless, the majority of the interviewees indicated that they felt exposed. The findings from the interviews provided some insight on how journalists viewed their safety. Lyon (1994:218-219) warns against distrust and suggests that "paranoia produces paralysis.

4.2.5 Theme 5: Journalists fight back

Participants recognised issues pertaining to information security as a serious concern – primarily for all investigative journalists. The study confirmed this perception through observations arising from the interviews with participants. Participants stated that their employers had either promised or equipped them with necessary technical tools for their cell phones and laptops. In this case, technical tools referred to digital security software. However, participants were not forthcoming with information regarding such software and declined to answer the question. They simply said that it would give the spies some ideas.

Another participant added that, over and above technical tools, the key thing was the hands-on guidance and mentorship provided by their bosses. "Mentorship and guidance are crucial in investigative journalism and journalism in general," said the participant, adding that the newspaper he worked for had a good legal budget to back investigative journalists. As far as technology is concerned; the participant stated there was almost an arms race between the spies and the journalists in terms of technology on a case-by-case basis on how to do research. "We invest in tools; kits and software," said the participant.

Two of the participants, however, seemed worried about their digital security and concerned about their physical safety. One said when their lives were in danger, their employer would provide them with 24-hour security, and this protection would extend to their families.

One participant stated that he always declined the personal protection, as he did not want to attract attention by going around with bodyguards.

Interviewee AE:

> *When it is clear that even if the source is unnamed, it will be obvious he leaked the information because he is the only person who has it.*

Interviewee AC:

> *When source-threat analysis confirms the risk, I omit the name(s) of the source(s).*

Interviewee AE:

> *When I know so much more than I can write; for example, the State of Capture. I knew more than I could write and we could have blown up the investigation three/four years earlier. In the case of irrefutable evidence, we never self-censor; instead, we go big.*

Interviewee AA:

> *I sometimes describe certain developments and/or people in particular ways so as to source people.*

Interestingly, all the participants asserted that their editors, notwithstanding the heightened rhetoric from government and the intensity of snooping, had never censored them or encouraged self-censorship. The respondents further remarked that journalists in the end only wrote about 20% of what they actually know. One participant went further by saying, "most of what I can't write is unprovable at the time of writing, or it is information known by only one source. I would rather try to confirm the information by means of a few other routes later on, but I will never put a source in a difficult situation". Another respondent said: "The buck stops with me and I am the one who should tell my boss whether a story will compromise and expose a source." A third participant was uncomfortable with the word "censor" when it came to editors,

One of the participants also reported that when meeting a source who was perceived to be vulnerable, they made sure that their mobile phones were completely disabled several kilometres away from the meeting place. Another participant advised that the best way to communicate with sources was face-to-face meetings, and in hard-copy documents. Yet another participant said if face-to-face communication was impossible, they used secret Gmail accounts to which only the journalist and the source knew the password. "Protecting my sources is the first thing I do in my work," said the participant. Apart from encrypted emails and other countermeasures, respondents agreed that the best time and place for meeting sources was after hours and at their homes.

Other participants suggested that sources should never be compromised, as these people actually risked their own lives. The participants advised that the first rule was to write in such a way that the story would not reveal who the source was.

Interviewee AB:

> *The golden rule of journalism is to protect your sources at all times, by any means necessary.*

Interviewee AG:

> *Any journalist who is worth his salt is prepared to go to jail rather than reveal his or her source(s). Protecting a source is one of the fundamentals of journalism.*

Interviewee AH:

> *We also go to great lengths to protect the identity of sources. This sometimes includes being deliberately vague when we describe or refer to these sources.*

journalists. As for the reason for spying on journalists, findings showed that the State was getting increasingly uncomfortable and agitated by reports that highlighted its corruption and inability to deliver on its promises. However, despite this, the journalists were determined to unravel what was happening inside the State and why citizens should know the truth.

Surprisingly, findings showed that surveillance, to some extent, helped journalists to be more responsible in their reporting, and to leave no room for errors. However, respondents were adamant that they were not giving spooks the credit for responsible journalism.

What also emerged strongly from the findings was that surveillance discouraged journalists from pursuing their investigations for fear of being harmed and bringing harm to their sources. In addition, evidence also suggested that many journalists applied self-censorship as a way of protecting themselves.

On the legislation side, findings showed that there was a huge need for the government to tighten the weak legislation and oversight on intelligence with regard to state security. Findings also revealed that the State's dragnet was concentrated on investigative journalists and the investigative units of those newspapers who published investigative journalism.

The study made it evident that investigative journalism plays a significant role in civil society. It is hoped that this research will contribute to an understanding of the extent to which the State spies on the media and shine some light on a long obstructed area with profound implications for the quality of journalism in South Africa.

Findings furthermore confirmed the State's effort to criminalise a legitimate and legally recognised method of public accountability –

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APPENDIX C: Interview questions

1. Have you ever been surveilled by the State in the course of your work?
2. Has the State ever tried to tamper with an investigation of yours in any other way?
3. What sorts of methods do you believe the State employs to limit investigative journalists, other than surveillance?
4. Do you know of stories of how other journalists have been surveilled?
5. Why do you think the State is doing this?
6. Do you feel vulnerable professionally, personally or in any other way?
7. What practical measures do you take to prevent the State's interference in your work? Or do you take any practical measures to mitigate this sense of vulnerability (if it exists)?
8. Do you take any practical measures when writing up your investigation into a news story? (i.e. how you write it up to protect sources, yourself, etc.)
9. Have you ever self-censored a story to protect yourself or your sources?
10. Has an editor ever censored your story for the same reason?
11. Does the fact that you have a public profile help you to feel safer?
12. Does the newsroom offer you any form of protection or reassurance in your work? Whether in the form of resources, or through technical tools, or just support in any way?
13. How does state surveillance make you feel about the work you do?
14. How does it make you feel about the State/government?